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United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 || v.

14 | ROLAND HEATHINGTON,

15 Defendant.

CASE NO. 2:20-CR-00008-TLN

**STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER**

DATE: June 18, 2020

TIME: 9:30 a.m.

COURT: Hon. Troy L. Nunley

This case is set for status conference on June 18, 2020. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice.” Further, pursuant to General Order 611, this Court’s declaration of judicial emergency under U.S.C. § 3174, and the Ninth Circuit Judicial Council’s Order of April 16, 2020 continuing this Court’s judicial emergency, this Court has allowed district judges to continue all criminal matters to a date after May 2, 2021.¹ This and previous General Orders, as well as the declarations of judicial emergency, were entered to address public health concerns related to COVID-19.

24 Although the General Orders and declarations of emergency address the district-wide health
25 concern, the Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision
26 "counteract[s] substantive openendedness with procedural strictness," "demand[ing] on-the-record

¹ A judge “may order case-by-case exceptions” at the discretion of that judge “or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1 findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-
2 record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such
3 failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153
4 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit
5 findings on the record “either orally or in writing”).

Based on the plain text of the Speedy Trial Act—which Zedner emphasizes as both mandatory and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent declaration of judicial emergency require specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

14 The General Orders and declaration of judicial emergency exclude delay in the “ends of justice.”
15 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address
16 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has
17 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-
18 week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d
19 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed.
20 *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to
21 exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency).
22 The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated
23 by the statutory rules.

24 In light of the societal context created by the foregoing, this Court should consider the following
25 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
26 justice exception, § 3161(h)(7) (Local Code T4).² If continued, this Court should designate a new date

² The parties note that General Order 612 acknowledges that a district judge may make “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D. Cal. March 18, 2020).

1 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
2 pretrial continuance must be “specifically limited in time”).

3 **STIPULATION**

4 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
5 through defendant’s counsel of record, hereby stipulate as follows:

6 1. By previous order, this matter was set for status on June 18, 2020.

7 2. By this stipulation, defendant now moves to continue the status conference until
8 September 10, 2020, at 9:30 a.m., and to exclude time between June 18, 2020, and September 10, 2020,
9 under 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4].

10 3. The parties agree and stipulate, and request that the Court find the following:

11 a) The government has represented that the discovery associated with this case
12 includes the discovery associated with this case includes approximately 60 pages of police
13 reports, as well as the defendant’s criminal history sheet, body camera videos, and photographs.
14 All of this discovery has been either produced directly to counsel and/or made available for
15 inspection and copying.

16 b) Counsel for defendant desires additional time to review this discovery, investigate
17 possible defenses or suppression issues, consult with his client, and negotiate a plea with the
18 government. Since the last status conference, it has still been difficult for counsel to meet with
19 his client to review discovery in light of office restrictions due to the COVID-19 pandemic.
20 Counsel has therefore been limited in his ability to review discovery with his client and have a
21 meaningful discussion about the discovery, a potential plea, and sentencing with his client.

22 c) Counsel for defendant believes that failure to grant the above-requested
23 continuance would deny him/her the reasonable time necessary for effective preparation, taking
24 into account the exercise of due diligence.

25 d) The government does not object to the continuance.

26 a) In addition, due to the public health concerns cited by the General Orders and
27 declarations of judicial emergency, and presented by the evolving COVID-19 pandemic, an
28 ends-of-justice delay is apt in this case.

1 b) Based on the above-stated findings, the ends of justice served by continuing the
2 case as requested outweigh the interest of the public and the defendant in a trial within the
3 original date prescribed by the Speedy Trial Act.

4 c) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
5 et seq., within which trial must commence, the time period of June 18, 2020 to September 10,
6 2020, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
7 T4] because it results from a continuance granted by the Court at defendant's request on the basis
8 of the Court's finding that the ends of justice served by taking such action outweigh the best
9 interest of the public and the defendant in a speedy trial.

10 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
11 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
12 must commence.

13 IT IS SO STIPULATED.

14 Dated: June 15, 2020

15 McGREGOR W. SCOTT
United States Attorney

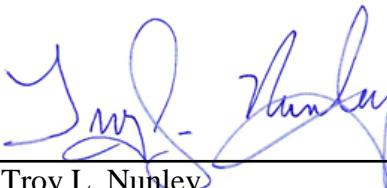
16 _____
17 /s/ ROSS PEARSON
ROSS PEARSON
18 Assistant United States Attorney

19 Dated: June 15, 2020

20 _____
21 /s/ JEROME PRICE
JEROME PRICE
Counsel for Defendant
22 ROLAND HEATHINGTON
23 (Authorized by email on June
15, 2020)

24 **FINDINGS AND ORDER**

25 IT IS SO FOUND AND ORDERED this 15th day of June, 2020.

26 
27 _____
28 Troy L. Nunley
United States District Judge